

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 267 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PARSURAM GHANSHYAMBHAI VYAS

Versus

STATE OF GUJARAT

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Appearance:

MR NITIN M AMIN for Petitioner  
MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1  
MR NL PATEL for Respondent No. 2

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CORAM : MR.JUSTICE N.J.PANDYA

Date of Order: 30/07/97

ORAL ORDER

Though Rule has been issued and made returnable,  
no reply is filed. The petition is against the  
application given in Criminal Case No.898 of 1994, at  
Exh.12, seeking an order of discharge, alleging offences  
punishable under Sections 420 and 406 of IPC.

A private complaint was lodged in the court of ld.JMFC, Gandhinagar, alleging the aforesaid two offences which was sent for inquiry under Section 156(3) of the Code of Criminal Procedure. The chargesheet came to be filed on 3.3.1994 which is, surprisingly, for both the offences.

The transaction related to the sale of an Ambassador Car for the sum of Rs.65,000/- where Rs.40,000/- was paid and the car was to be handed over when the balance amount was to be paid within one month, for which, an agreement was signed on Stamp Paper of Rs.20/-. Obviously, this is, therefore, a commercial transaction where the property involved is movable and in view of the part payment, and the delivery of the property under the Sale of Property Act is passed on and as such, it was of the ownership of the accused.

Ignoring all these aspects, pursuant to the said order under Section 156(3), it was the complainant who got the car back from the petitioner-accused and thereafter, he invited the police, as per page no.17, to take possession of it, which, by Panchnama at page no.18, taken by the police as muddamal of the offences. In my opinion, now, there could not have been a travesty of the criminal process, if according to the complainant, relying upon misrepresentation which was made to part with the property-Ambassador Car and if that Car is given back to him, there would not be any offence left because, he is not made to suffer any wrongful loss and on the contrary, there would be indication of his having returned the amount of Rs.40,000/- which may, if the circumstances may warrant, amount to an offence.

Under the circumstances, it is certainly not possible to understand as to how the ld. JMFC, Gandhinagar dismissed the application for discharge and instead, passed the order dated 3rd June 1995, and decided to proceed further in the matter and to frame the charge. This petition is, therefore, required to be allowed. Accordingly the petition is allowed. The order dated 3rd June 1995 is set aside. The prayer for discharge is granted and the accused petitioner accordingly stands discharged of the offences alleged against him in Criminal Case No.898 of 1994. Rule is made absolute accordingly.

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sreeram.

